

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

ABEL LINARES,

Defendant.

CASE NO. 8:05CR252

MEMORANDUM AND ORDER

This matter is before the court on remand from the Eighth Circuit Court of Appeals (Filing No. 159). The Defendant, Abel Linares, seeks to appeal from the Memorandum and Order (Filing No. 152) and Judgment (Filing No. 153) denying his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion").

The federal rules of appellate procedure require that a defendant appealing the denial of a § 2255 motion file both a notice of appeal and a request for a certificate of appealability. Fed. R. App. P. 4, 22(b). In this case, only a notice of appeal was filed. (Filing No. 154.) The Eighth Circuit remanded the case for consideration in light of *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir.).

Therefore, the Court will review this matter and determine whether a certificate of appealability should issue, as a certificate of appealability is required for an appeal of the denial of a § 2255 motion. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (“AEDPA”), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. A

“substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

For the reasons thoroughly discussed in the Court’s previously issued Memorandum and Order (Filing No. 152) denying the Defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. A certificate of appealability shall not be issued in this case;
2. The Clerk of Court shall provide a copy of this Order to the Eighth Circuit Court of Appeals; and
3. A copy of this Order shall be mailed to the Defendant at his last known address.

DATED this 2nd day of August, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge